

**Illinois Program Work Plan
February 2011
Water Programs**

In March 2008, the Illinois Citizens for Clean Air & Water (Illinois Citizens) submitted a petition for withdrawal of Illinois' authorized National Pollutant Discharge Elimination System (NPDES) program. Illinois Citizens contend that the Illinois Environmental Protection Agency (Illinois EPA) is not properly administering the NPDES program for concentrated animal feeding operations (CAFOs). In February 2009, Illinois Citizens, joined by the Environmental Integrity Project, provided additional information in a supplementary petition to the U.S. Environmental Protection Agency (U.S. EPA).

U.S. EPA conducted an informal investigation of the petitioners' allegations and issued a report in September 2010¹. The report discusses U.S. EPA's initial findings for the various program areas, and the actions that Illinois EPA must take to comply with Clean Water Act requirements for authorized state NPDES programs. In particular, Illinois EPA must accomplish the following:

NPDES Permitting for CAFOs

- Issue NPDES permits to CAFOs that are required to be permitted under NPDES regulations.
- Develop and maintain a comprehensive inventory of CAFOs and evaluate their regulatory status.
- Establish technical standards for nutrient management by Large CAFOs and revise title 35 of the Illinois Administrative Code, Subtitle E, as necessary to be consistent with the federal CAFO rules.
- Ensure that sufficient resources are maintained to issue or deny permits.

NPDES Compliance Monitoring and Enforcement for CAFOs

- Revise the inspection process for livestock and poultry facilities to enable Illinois EPA to determine and track whether inspected facilities are CAFOs required to have NPDES permits and whether they are in compliance with NPDES requirements,
- Develop standard operating procedures and properly investigate, track, and respond to citizen complaints reporting potential violations of NPDES requirements.

¹ See the *Initial Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program for Concentrated Animal Feeding Operations in the State of Illinois (Initial Results)*, available at: <http://epa.gov/region5/illinoiscafo>.

- Take timely and appropriate enforcement action to address noncompliance by CAFOs.
- Require that Illinois EPA enforcement actions address CAFOs failing to apply for an NPDES permit, where a facility has discharged, is discharging, or is designed, constructed, operated, or maintained such that it will discharge.
- Ensure that sufficient resources are maintained for inspections and enforcement of NPDES requirements for CAFOs.

The following outlines the specific actions that Illinois EPA will take to address the initial findings in U.S. EPA's report. Actions that U.S. EPA will take to assist Illinois EPA are provided below as well.

NPDES Permitting for Concentrated Animal Feeding Operations

Objective 1: All Large CAFOs that discharge or propose to discharge possess NPDES permits. This objective addresses U.S. EPA's CAFO program review findings related to issuance of NPDES permits to CAFOs as required under the NPDES regulations². It also addresses U.S. EPA's finding related to resources for the CAFO NPDES program³.

Approach:

1. By February 2011, Illinois EPA CAFO permit managers will confer with all Region 5 States, including Minnesota and Michigan, to learn about the systems and staffing those States employ to authorize CAFOs under general permits.
2. Illinois EPA has posted job announcements for three new field positions and three new permit positions to work full time on the NPDES CAFO program. Illinois EPA will use best efforts to fill the positions by August 2011. By August 2011, Illinois EPA will provide a preliminary workload assessment to U.S. EPA. The assessment will identify the number of full-time employees required to implement an effective CAFO permitting, compliance evaluation, and enforcement program for a range of estimates of the regulated universe. Illinois EPA will provide the draft assessment to U.S. EPA for review. Illinois EPA will prepare a final workload assessment in conjunction with production of the statewide CAFO inventory discussed below⁴. The final assessment will identify staff distribution by function and geographic area of responsibility.

² See the *Initial Results*, Section VI. 1, page 35.

³ See the *Initial Results*, Section VI. 6, page 40.

⁴ Compliance Monitoring and Enforcement Objective 1, approach 1.b.

3. Newly-hired Illinois EPA CAFO permit writers will complete the NPDES Permit Writers' Course and the Nutrient Management Plan (NMP) Training for Federal and State Permit Writers, Inspectors, and Technical Assistance Providers within six months after their start date. Existing permit writers will complete the NMP Training within 30 days after it becomes available on-line. By March 2011, U.S. EPA will train existing permit writers on the Clean Water Act and federal regulations prohibiting unpermitted discharges and requiring CAFOs that discharge or propose to discharge to apply for a permit. U.S. EPA will train newly-hired permit writers within six months after their start date.
4. Illinois EPA will establish a schedule for making a completeness determination and taking preliminary and final action on all permit applications that were pending as of November 30, 2010. By February 15, 2011, Illinois EPA will provide a draft of the schedule to U.S. EPA for approval or approval with modification. Subsequent to the approval, Illinois EPA will provide a monthly status report on each application to U.S. EPA. The frequency of such reports may be adjusted after the initial six months by mutual agreement.
5. Illinois EPA will establish a standard operating procedure, with timelines, for making a completeness determination and taking preliminary and final action on permit applications received on and after December 1, 2010. The SOP will provide for final action not more than 180 days after receipt of an application. Under the SOP, Illinois EPA will respond to all incomplete applications with a notice of incompleteness (NOI) delineating the deficiencies in the application and requiring a response within 30 days. Illinois EPA will copy U.S. EPA on all NOIs. The SOP will provide that Illinois EPA will issue a violation notice (VN) under section 31 of the Illinois Environmental Protection Act or request U.S. EPA to issue an information collection order under section 308 of the Clean Water Act for any applicant who has not responded or when Illinois EPA finds that the application is still incomplete after issuance of the NOI. By February 2011, Illinois EPA will provide a draft of the SOP to U.S. EPA for review and approval or approval with modification.
6. By August 2011, Illinois EPA will report on the outcome of a re-investigation of the 45 cases in which Illinois EPA determined that an applicant did not require a permit. The report will include conclusions and, as appropriate, recommendations for further action.
7. U.S. EPA will issue information collection orders to CAFOs that have submitted incomplete applications to Illinois EPA and are not subject to federal enforcement. Illinois EPA will refer such CAFOs to U.S. EPA within 30 days after the deadline Illinois EPA sets in a NOI letter or VN to the applicant. U.S. EPA will issue the information collection orders within 60 days after receipt of a complete referral from Illinois EPA.

8. Within 60 days following publication of amendments to 35 Ill. Adm. Code, subtitle E, Illinois EPA and U.S. EPA will jointly identify permit conditions that Illinois EPA could modify and practices that Illinois EPA could adopt, consistent with the 2003 and 2008 federal rules for CAFOs, to streamline the process for review of NMPs and incorporation of NMP terms into permits. Such methods include, but are not limited to, use of Manure Management Planner or other nutrient management planning software. For any conditions or practices so identified, Illinois EPA will act to modify the conditions or adopt the practices in accordance with the schedule set in Objective 2, approach 7, of this section. Illinois EPA may request support for implementation of the streamlining actions.

Indicia of Progress: For applications submitted prior to March 31, 2011, Illinois EPA completes the following by June 30, 2011: issue permits to the applicants, post draft permits or notices of coverage for public comment, or refer the CAFO to the Illinois Attorney General's office for formal enforcement or U.S. EPA for an information collection order. For other applicants, Illinois EPA takes final action as detailed in the SOP contemplated in approach 5 in this section.

Objective 2: U.S. EPA approves amendments to 35 Ill. Adm. Code, subtitle E, which (1) reflect the 2003 and 2008 revisions to the federal regulations for CAFOs and (2) require the owners or operators of all Large CAFOs to register with Illinois EPA. This objective addresses U.S. EPA's CAFO program review findings related to administrative rules for CAFOs as well as technical standards for nutrient management by Large CAFOs⁵.

Approach:

1. Illinois EPA provided draft amendments to 35 Ill. Adm. Code, subtitle E, to U.S. EPA for review on December 1, 2010. U.S. EPA provided comments and recommendations on January 14, 2011. Illinois EPA will revise the draft to resolve U.S. EPA's comments and provide the revised draft to U.S. EPA by March 31, 2011. U.S. EPA will provide any remaining comments and recommendations within 15 days of receipt.

2. Within 90 days after receipt of U.S. EPA's comments and recommendations on the revised draft, Illinois EPA will resolve U.S. EPA's comments and file the amendments as a proposed amendatory rulemaking with the Illinois Pollution Control Board. Illinois EPA and U.S. EPA program managers will elevate issues to agency water directors or higher as may be required to resolve U.S. EPA's comments within the 90-day period contemplated here.

⁵ See the *Initial Results*, Section VI. 7, page 41.

3. As appropriate given the content of the draft amendments and other considerations, U.S. EPA will recommend that the Board propose the amendments for the purpose of requesting public comment.
4. Within 30 days after publication of amendments to 35 Ill. Adm. Code, subtitle E, Illinois EPA will inform the owner of each Large CAFO in the State's inventory, in writing, about the duty to apply for a permit and the potential consequences for failing to apply. Illinois EPA will provide a draft of the letter to U.S. EPA for review and approval or approval with modification.
6. Within 45 days after the amendatory rulemaking becomes effective, Illinois EPA will submit the final amendments to U.S. EPA for action under 40 C.F.R. §123.62.
7. Within 120 days after the effective date of the amendatory rulemaking, Illinois EPA will revise its permit application forms and formally ask the public to comment on draft modifications to general permit ILA01, as appropriate, based on the amendments and the federal regulations.

Indicia of Progress: U.S. EPA finds the amended rules to be consistent with federal regulations. Illinois EPA implements the amended rules upon becoming effective. U.S. EPA acts on the amendments within 90 days of receipt.

NPDES Compliance Monitoring and Enforcement for CAFOs

Objective 1: To detect, report, and sufficiently document all violations in order to support enforcement of the federal regulations. This objective addresses U.S. EPA's CAFO program review findings related to developing and maintaining a comprehensive inventory of CAFOs and evaluating their regulatory status, revising the inspection processes to determine and track CAFOs requiring NPDES permits, and developing and implementing SOPs for responding to CAFO-related citizen complaints⁶.

Approach:

1. Illinois EPA will implement a short-term strategy for evaluating facilities that are likely to be Large CAFOs. The strategy includes the following:
 - a. The creation of an interim NPDES inspection list of 25 likely Large CAFOs using existing lists of known and potential CAFO sites developed by Illinois EPA regional offices, permit applications, citizen tips and complaints, and information from U.S. EPA, the Illinois Department of Agriculture, and the Illinois Emergency Management Agency. Illinois EPA will provide the list to U.S. EPA, including location data, no later than February 28, 2011.

⁶ See the *Initial Results*, Section VI. 2, pages 36-38.

b. By February 28, 2011, Illinois EPA will develop a plan to create and maintain a comprehensive inventory of Large CAFOs. Under the plan, Illinois EPA will seek commitments whereby the Illinois Department of Agriculture and Illinois Department of Public Health will routinely provide information about potential Large CAFOs to Illinois EPA. Illinois EPA will enter and maintain the inventory in the Integrated Compliance Information System (ICIS). The inventory will include potential CAFO sites identified by Illinois EPA regional offices, permit applications, citizen tips and complaints, U.S. EPA, the Illinois Department of Agriculture, the Illinois Department of Public Health, and the Illinois Emergency Management Agency. The plan may make use of a Geographic Information System-based pilot inventory currently being developed for seven high profile counties. Illinois EPA will provide the plan to U.S. EPA for review and approval or approval with modification.

c. Illinois EPA will develop a CAFO NPDES inspection/evaluation standard operating procedure by February 28, 2011. The SOP will enable the inspector to determine whether CAFOs discharge or propose to discharge. The SOP should include pre-inspection preparation, access procedures, site visit conduct, and inspection timing, sampling, and post inspection procedures including report timing, format, and content (including discharge documentation). Illinois EPA will provide the SOP to U.S. EPA for review and approval or approval with modification.

d. Illinois EPA will organize an initial training for all of its field inspectors and office enforcement staff so they can effectively evaluate CAFOs that are on the interim NPDES inspection list. By February 1, 2011, Illinois EPA will provide a proposed agenda to U.S. EPA for approval or approval with modifications. U.S. EPA will review training materials. Training will cover the approved SOP identified above in Paragraph 1(c) and will include pre-inspection preparation, inspection conduct, post-inspection follow-up and documentation, review of compliance data (i.e., overflow reports, discharge monitoring reports, Single Event Violations (SEVs), wet weather significant noncompliance (SNC) determinations, and complaints), new violation processing procedures instituted under this program work plan, and identification of new facilities/discharges. By March 2011, U.S. EPA and Illinois EPA compliance and enforcement staff will conduct this training. The Illinois Attorney General's office staff will be invited to participate.

e. Illinois EPA will perform 25 initial NPDES evaluations by June 1, 2011, to determine whether the facilities discharge or propose to discharge, including during wet weather. Illinois EPA will perform an additional 25 NPDES evaluations by June 1, 2012.

f. At its existing Compliance Group monthly meetings, Illinois EPA will review the findings and documentation of all NPDES evaluations for: a determination as to whether the facility meets the definition of a CAFO, areas of non-compliance, wet weather SNC determinations, violations detected, documentary evidence, and recommendations for correcting the violations. Beginning in May 2011, Illinois EPA and U.S. EPA will confer monthly to review the findings and documentation of all CAFO noncompliance cases beginning with those initiated in 2009.

2. By June 1, 2011, Illinois EPA will develop and provide to U.S. EPA a long-term CAFO NPDES training curriculum for all staff conducting CAFO NPDES inspections. The curriculum will be completed by all existing CAFO inspectors and their first-line supervisors by August 2011. New staff will complete the curriculum within six months of their start date, and prior to conducting inspections independently. The curriculum will cover all State and federal Clean Water Act-related matters, including CAFO inspector training requirements specified in U.S. EPA internal order 3500.1.

3. By June 2011, Illinois EPA will develop a citizen complaint SOP and database for facilities that are potential CAFOs. The SOP will provide for a written report on investigation results to the complainant. The database will include a field recording the response to the complaint. The SOP will also provide instruction for ensuring 24-hour spill/release response capability which includes on-site presence of an NPDES trained inspector, sampling capability, and equipment to ensure that spills/releases from facilities are documented and assessed to determine if the facilities are CAFOs and require NPDES permits. The SOP will describe laboratory capabilities and services necessary to complete data analysis within prescribed holding times for pollutants of concern. The SOP must specifically address maintenance of those capabilities for those events which occur at night, on weekends, and on holidays.

4. Illinois EPA will develop an annual site-specific CAFO inspection plan which ensures NPDES inspection at a minimum of 20 percent of all permitted CAFOs, consistent with U.S. EPA's National NPDES Compliance Monitoring Strategy. Illinois EPA will provide the plan to U.S. EPA by September 1 of each year for approval.

5. During federal fiscal year 2011, U.S. EPA will conduct oversight inspections of a minimum of five Illinois EPA NPDES CAFO inspections to evaluate the effectiveness of the Illinois EPA inspection program. U.S. EPA inspectors will document their findings, and evaluate the thoroughness and scope of prior Illinois EPA inspections as well as the appropriateness of the record-keeping and reporting associated with the inspections. U.S. EPA will provide copies of these inspection reports to Illinois EPA within 60 days of completion. U.S. EPA will also conduct independent inspections at additional CAFOs with suspected wet weather discharges. U.S. EPA will invite Illinois EPA participation. U.S. EPA will initiate any appropriate follow-up enforcement consistent with existing State/U.S. EPA enforcement communication agreements and the Environmental Performance Partnership Agreement.

Indicia of Progress: Illinois EPA creates and maintains in ICIS a consolidated inventory of Large CAFOs. The inventory is easily accessible to all Illinois EPA staff and the public. Illinois EPA conducts NPDES evaluations at 25 potential Large CAFOs by June 1, 2011, and a total of 50 by June 1, 2012, consistent with approved SOPs. Illinois EPA implements approved annual

inspection plans for permitted CAFOs consistent with the National Compliance Monitoring Strategy. Illinois EPA implements a satisfactory training program for inspectors. Illinois EPA responds to all citizen complaints and emergency CAFO-related discharges in a timely manner. Illinois EPA identifies and records 100 percent of Single Event Violations and all wet weather Significant Non-Compliance (SNC) in ICIS.

Objective 2: To properly track and efficiently resolve newly-identified violations. This objective focuses on newly-identified violators and addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs and the requirement that all CAFOs that discharge or propose to discharge must apply for an NPDES permit.⁷

Approach:

1. Illinois EPA's Bureau of Water will revise its Enforcement Response Guide (ERG) in a manner designed to assure timely and appropriate response to violations detected at CAFOs and ensure a prompt return to compliance⁸. Illinois EPA will submit the revised ERG to U.S. EPA by February 15, 2011. The ERG will require all Large CAFOs to apply for and obtain an NPDES permit where the CAFOs discharge or propose to discharge. The ERG will require all Medium livestock and poultry facilities to apply for and obtain a permit where the facility meets the definition of a CAFO. In addition, the ERG will reflect the wet weather SNC policy in the determination of SNC as well as the appropriate enforcement response. Illinois EPA will submit the ERG to U.S. EPA for review and approval or approval with modifications. Illinois EPA will fully adopt and implement the ERG within 30 days of U.S. EPA approval or approval with modifications. All staff working on livestock and poultry issues will be trained and the revised ERG will be implemented by May 31, 2011.

2. By May 1, 2011, Illinois EPA will issue violation notices (VNs) for all significant noncompliance detected at CAFOs, within 180 days of Illinois EPA becoming aware of the alleged violation, pursuant to Section 31(a) of the Illinois Environmental Protection Act (Act). The VN will contain a recommended remedy and schedule for implementation as appropriate. Compliance Commitment Agreements (CCAs) will be accepted when they bind the respondent to the requirements and timeframes recommended in the VNs. If Illinois EPA is unable to negotiate an acceptable CCA within 120 days of issuing the VN, Illinois EPA will refer the matter to the Illinois Attorney General's office. For conditions that constitute an imminent or substantial endangerment to human health, the environment or property, Illinois EPA will

⁷ See the *Initial Results*, Section VI. 3, pages 38-39.

⁸ The ERG should include systems and procedures which assure timely and appropriate response to violations detected at other sources as well.

immediately refer the matter to the Illinois Attorney General's office pursuant to Section 43 of the Act.

3. In cases where the facility does not respond to the VN or proposes a remedy that is less effective than the remedy proposed by Illinois EPA, Illinois EPA will immediately complete the necessary actions under Section 31 to allow Illinois EPA to formally refer the matter to the Illinois Attorney General's office or the State's Attorney of the county in which the alleged violation occurred. Simultaneously, Illinois EPA will refer the case to its existing Enforcement Decision Group for pre-referral consideration of the case.

Indicia of Progress: Illinois EPA consistently follows the approved ERG. All CCAs are finalized within 120 days of the VN. No State-lead enforcement cases result in U.S. EPA taking additional action to resolve the same violations.

Objective 3: To assure that unresolved enforcement matters are properly tracked and efficiently resolved. This objective focuses on existing matters and addresses U.S. EPA's CAFO program review findings related to timely and appropriate enforcement addressing noncompliance by CAFOs⁹.

Approach:

1. Beginning with the first quarter of calendar year 2011, Illinois EPA program and legal managers, Illinois Attorney General's Environmental Division managers, and U.S. EPA program and legal managers will conduct a quarterly docket review of all referred CAFO matters and all open federal enforcement cases. Participants will agree on the lead agency, path to resolution (including target dates), appropriate penalty resolution, and desired results. Illinois EPA will document decisions.
2. By July 2011, U.S. EPA legal staff and management will meet with the Illinois Attorney General's office and Illinois EPA's legal staff and management to discuss legal issues and strategy with respect to CAFO litigation and enforcement, including U.S. EPA penalty policies.
3. Illinois EPA will provide a report by no later than the 15th of each month to the U.S. EPA Water Enforcement Branch Chief. The report will reflect the activities completed during the preceding month. The reports will include the following:
 - a list and electronic copy of the report for each facility evaluated under Objective 1, approach 1(e), to determine whether the facility is subject to NPDES permitting requirements;
 - results of the Compliance Group's determinations under Objective 1, approach 1(f);

⁹ See the *Initial Results*, Section VI. 3, pages 38-39.

- a list of all potential CAFO-related citizen complaints/spills/releases received in the preceding month under Objective 1, approach 3, and the disposition of the cases;
- a list of potential CAFO facilities evaluated by the Enforcement Decision Group and a description of actions taken with regard to those facilities, including copies of any referrals to the Illinois Attorney General's office or written compliance determinations; and
- a list of all potential CAFO NPDES enforcement matters referred to the Illinois Attorney General's office or that are before the Illinois Pollution Control Board and a written summary of the status of the cases.

The frequency of reports may be adjusted after the initial six months by mutual agreement by Illinois EPA and U.S. EPA.

Indicia of Progress: All pending matters meet agreed-upon schedules for action and resolution. Decisions affecting case progress are made expeditiously, and barriers are removed. Newly-referred matters placed on the docket progress appropriately. Monthly reports are submitted timely and contain all required information.